

SILGAN WHITE CAP UK LIMITED TERMS AND CONDITIONS

1. Application of Terms and Conditions

SWCUK shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of SWCUK which shall not be considered binding until the Buyer receives notification in writing by SWCUK; and these Terms and Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by SWCUK, or any such order is made or purported to be made, by the Buyer.

2. Interpretation

In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings: **“Buyer”** means the person or entity whose order for the Goods is accepted by SWCUK in writing; **“Contract”** means the contract for the purchase and sale of the Goods under these Terms and Conditions; **“Delivery Date”** means the date on which the Goods are to be delivered as stipulated in the Buyer’s order and acknowledged by SWCUK in writing or as notified to the Buyer in writing by SWCUK that the Goods are ready for shipment; **“Goods”** means the goods (including any instalment of the goods or any parts for them) which SWCUK is to supply in accordance with these Terms and Conditions; **“SWCUK”** means Silgan White Cap UK Limited, a company registered in England under Company No. 02416087 of C/O BRYAN CAVE, 88 WOOD STREET, LONDON, EC2V 7QS and includes all employees and agents.

3. Warranty

The period of warranty shall be one year, starting on the Delivery Date.

4. Orders and Specifications

No order submitted by the Buyer shall be deemed to be accepted by SWCUK unless and until confirmed in writing by SWCUK’s authorised representative. The technical specification for the Goods shall be that advised to the Buyer unless otherwise agreed upon. Specified plate-thickness and weight shall where possible be adhered to and SWCUK shall attempt to match specified colour shades as closely as possible. The Buyer confirms that SWCUK does not guarantee strict compliance with the technical specifications. Where manufacturing is based on drawings, specifications, samples provided by the Buyer, the Buyer shall be solely responsible for suitability for application. The Buyer shall be responsible for compliance with legal and government regulations in using the Goods. Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by SWCUK are intended as a guide only and shall not be binding on SWCUK. SWCUK reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements within the United Kingdom. No order which has been accepted by SWCUK may be cancelled by the Buyer except with the agreement in writing of SWCUK on the terms that the Buyer shall indemnify SWCUK in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by SWCUK as a result of such cancellation.

5. Price

The price of the Goods shall be the price as may be agreed in writing by SWCUK and the Buyer. SWCUK reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the

price of the Goods to reflect any increase in the cost to SWCUK which is due to any factor beyond the control of SWCUK (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give SWCUK adequate information or instructions. The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to SWCUK.

6. Payment

The Buyer shall pay the price of the Goods without any other deduction, credit or set off within 30 business days of the date of SWCUK’s invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Buyer and SWCUK in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. All payments shall be made to SWCUK as indicated on the form of acceptance or invoice issued by SWCUK.

7. Delivery

SWCUK shall deliver the Goods to the place in the United Kingdom specified in the Buyer’s order prior accepted by SWCUK, or SWCUK’s written acceptance as the location to which the Goods are to be delivered. The Delivery Date is the date where the Buyer’s order is acknowledged in writing by SWCUK or SWCUK notifies Buyer that the Goods are ready for shipment, and as such Delivery Date is approximate only and such time for delivery shall not be of the essence unless previously agreed by SWCUK in writing. The Goods may be delivered by SWCUK in advance of the Delivery Date upon giving reasonable notice to the Buyer. If the Buyer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, SWCUK shall be entitled upon giving written notice to the Buyer to store or arrange for the storage of the Goods and then notwithstanding the provisions of sub-Clause 9.1, risk in the Goods shall pass to the Buyer, delivery shall be deemed to have taken place and the Buyer shall pay to SWCUK all costs and expenses including warehouse storage costs and insurance charges arising from such failure. The Delivery of decorated and/or otherwise customized Goods and other bespoke items must be taken not later than six months from acknowledgement by SWCUK of Buyer’s order. If the Buyer fails to meet its obligation to take delivery, SWCUK shall be entitled to charge Buyer on the Delivery Date the full purchase price including all costs and expenses including warehouse storage costs and insurance charges arising from such failure. Save for ‘one-way packaging’ prior agreed in writing by SWCUK, any and all pallets and other containers including accessories shall be returned by the Buyer in good condition to SWCUK’s supplying plant or supplying warehouse within four weeks, after which SWCUK shall automatically and without notice be entitled to charge the cost of replacement pallets, containers and accessories to the Buyer. Unless otherwise stated in these Terms and Conditions, shipment and transfer

of risk shall be governed by the provisions of the latest Incoterms as amended from time to time.

8. Inspection/Shortage

The Buyer is under a duty to inspect the Goods on delivery or on collection as the case may be. SWCUK shall be under no liability for any damage or shortages that would be apparent on reasonable careful inspection if the provisions of this Clause 8 are not complied with and, in any event, subject to this Clause 8 and Clause 12 (Limitations on Liability) SWCUK will only be liable for any defects where a written complaint is delivered to SWCUK within 24 hours of delivery detailing the alleged damage complained of by the Buyer. In all cases where defects are complained of, SWCUK shall be under no liability in respect thereof unless an opportunity to inspect the Goods is supplied to SWCUK before any use is made thereof or any alteration or modification is made thereto by the Buyer, whereupon the Goods shall be deemed fit for purpose and of satisfactory quality and accepted by the Buyer. SWCUK shall at its sole option make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage or damage. The Buyer accepts that SWCUK shall reserve the right to deliver up to 10% (ten per cent) more or less of the ordered Goods, without committing a breach of these Terms and Conditions.

9. Risk and Retention of Title

Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when SWCUK has tendered delivery of the Goods. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until SWCUK has received in cash or cleared funds payment in full of the price of the Goods and any other goods supplied by SWCUK and the Buyer has repaid all moneys owed to SWCUK, regardless of how such indebtedness arose. Until payment has been made to SWCUK in accordance with these Conditions and title in the Goods has passed to the Buyer, the Buyer shall be in possession of the Goods as bailee for SWCUK and the Buyer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by SWCUK and shall insure the Goods against all reasonable risks. In the event that the Buyer sells or transfers the Goods to a third party before legal and beneficial title has passed to him under these Terms and Conditions, the proceeds of such sub-sale or transfer (or such proportion as is due to SWCUK) shall be held by the Buyer on behalf of SWCUK. The Buyer shall ensure that such moneys are held separately from, and are in no way mixed with, any other moneys or funds, and that all moneys held on SWCUK's behalf are identified as such. If the Goods are manufactured into another form or processed by the buyer, SWCUK shall be considered as manufacturer and shall acquire legal and beneficial title in the resulting goods or items; or if the Goods processed, combined or mixed with other materials owned by third parties, we shall acquire legal and beneficial title to the resulting goods, or a proportion of the title thereto equal to the contribution made to the resulting goods by the Goods which for the avoidance of doubt shall be the ratio of the invoice value of our goods or items plus the processing value to that of the other third party materials. SWCUK may, in accordance with the provisions of the Companies Act 2006, register any charge created by these Conditions. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of SWCUK, but if the Buyer does so all money owing by the Buyer to SWCUK shall (without prejudice to any other right or remedy of SWCUK) forthwith become due and

payable. SWCUK reserves the right to repossess any Goods in which SWCUK retains title without notice. The Buyer irrevocably authorises SWCUK to enter the Buyer's premises during normal business hours for the purpose of repossessing the Goods in which SWCUK retains title or inspecting the Goods to ensure compliance with the storage and identification requirements of Clause 9. The Buyer's right to possession of the Goods in which SWCUK maintains legal and beneficial title shall terminate if the Buyer commits or permits any material breach of his obligations under these Terms and Conditions; or the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors; or the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors; or the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

10. Defective Goods

Subject always to Clause 12, if on delivery of the Goods are defective in any material respect and the Buyer gives written notice of such defect to SWCUK within 24 hours of such delivery, SWCUK shall at its option replace the defective Goods within a time period to be agreed with Buyer but SWCUK shall have no further liability to the Buyer in respect thereof. No Goods may be returned to SWCUK without the prior agreement in writing of SWCUK. Subject thereto any Goods returned which SWCUK is satisfied were supplied subject to defects of quality or condition (not incurred during shipment) shall either be replaced or, where SWCUK is unable to supply replacement Goods within a time frame to be agreed between SWCUK and the Buyer, SWCUK shall refund or credit to the Buyer the pro-rated price of such defective Goods (of part thereof) and SWCUK shall have no further liability to the Buyer. For the avoidance of doubt, the Buyer shall not be entitled to cancel this Contract or any order, or series of orders which are governed by these Terms and Conditions, on the basis that SWCUK is in breach of Clause 10.

11. Buyer's Default

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to SWCUK, SWCUK shall be entitled to cancel the order or suspend any further deliveries to the Buyer; or appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and SWCUK) as SWCUK may think fit (notwithstanding any purported appropriation by the Buyer); or charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above HSBC plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). This condition applies if the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or the Buyer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an

individual or firm) becomes bankrupt or (being a company) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or Buyer ceases, or threatens to cease, to carry on business; or SWCUK reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly. If this sub-Clause applies then, without prejudice to any other right or remedy available to SWCUK, SWCUK shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. Limitation of Liability

Subject to the provisions of Clauses 7 and 10, the following provisions set out the entire financial liability of SWCUK (including any liability for the acts or omissions of its employees, agents, representatives, auxiliary persons and sub-contractors) to the Buyer in respect of any breach of these Terms and Conditions; or any use made (including but not limited to modifications) or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; or any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. Nothing in these Terms and Conditions excludes or limits the liability of SWCUK for death or personal injury caused by SWCUK's negligence; or fraud or fraudulent misrepresentation. Subject to the preceding Clauses SWCUK excludes all liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with its performance or contemplated performance under the Contract. SWCUK shall not be liable to the Buyer for any damages or loss, including but not limited to pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract. Notwithstanding the preceding Clause, and for the avoidance of doubt, SWCUK shall not be liable for any damages (including insignificant faults) caused by inappropriate or improper use, incorrect installation or implementation, incorrect or careless treatment improper changes and/or repair work (or consequences of) by the Buyer or any third party, and SWCUK does not assume any liability for damages which may directly or indirectly result from faults and/or omissions in the general processing guideline or from faults and/or omissions or conflicts, which may arise between the general processing recommendations and currently used processes. SWCUK shall at its option assign or transfer any debt or claim for damages to a third party.

13. Confidentiality, Publications and Endorsements

The Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business and/or products of SWCUK and will not use or disclose to any third party such

information without SWCUK's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default; The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which SWCUK is licensed to use or which is owned by SWCUK upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by SWCUK and (where appropriate) its licensor. The Buyer will use all reasonable endeavours to ensure compliance with this Clause 13 by its employees, servants and agents. The provisions of this Clause 13 shall survive the termination of the Contract.

14. Communications

All notices under this Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice. Notices shall be deemed to have been duly given when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage prepaid.

15. Force Majeure

Whether or not SWCUK is already subject to an existing default under these Terms and Conditions, SWCUK shall not be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond its reasonable control. Such causes include, but are not limited to: power failure, business interruptions, delayed delivery of raw materials and supplies, energy shortage, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of SWCUK. Under this Clause, the Buyer shall not be entitled to claim damages and provided in SWCUK's sole opinion performance is still achievable its only remedy in respect of SWCUK's time for performance (including but not limited to delayed delivery) shall be its entitlement to receive the Goods after the Force Majeure has been cured following no less than the same period of interruption under the Force Majeure.

16. General

No failure by a Party to enforce the performance of any provision in these Terms and Conditions shall constitute a waiver of the right to subsequently enforce that provision. In the event that one or more of the provisions of these Terms and Conditions are found to be unenforceable, those provisions shall be deemed severed and the remainder shall be enforceable. A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. These Terms and Conditions shall be governed by, and construed in accordance with, the laws of England and Wales and any dispute, proceedings or claim be governed by jurisdiction of the courts of England.